



Իրավաբանական  
Ազատ Մշակույթի ՀԿ



Ժողովրդավարության  
գարգացման  
հիմնադրամ

# Key issues related to the Disciplinary Proceedings of Judges Monitoring of proceedings for the period of January-June 2023

2024

“The Protection of Rights without Borders” non-governmental organization (Organization) has continued<sup>1</sup> monitoring of proceedings on disciplinary liability of judges by the Supreme Judicial Council with the aim to reveal existing legislative gaps and issues related to the practical implementation. The Organization presented the findings in the report on the monitoring of disciplinary proceedings conducted by the Supreme Judicial Council within the period of January-June of 2023.<sup>2</sup>

The study was done based on the *monitoring of the proceedings conducted by the Supreme Judicial Council and analysis of the published decisions on disciplinary liability*. In the reporting period, the Supreme Judicial Council examined 14 cases on disciplinary liability in relation to 17 judges. All public hearings of all 14 disciplinary proceedings against judges were monitored (overall 42 sessions) and all decisions published on the official webpage of the Supreme Judicial Council were analyzed. Data was collected through a tool specifically designed by the Organization. The information was subject to qualitative analysis in light of the description of the alleged disciplinary violation committed by the judge in question, as well as the reasoning and the assessment of the Supreme Judicial Council.

### ➤ *The Procedure*

According to Art. 141 of the Judicial Code, disciplinary action against judges may be imposed by the Supreme Judicial Council. The right to institute proceedings belongs to:

- 1) Ethics and Disciplinary Commission (of the General Assembly of Judges),
- 2) Ministry of Justice,

---

<sup>1</sup> PRWB, Practice of Disciplinary Liability of Judges of 2012-2017: Analysis of decisions of the Justice Council, 2019, available at: [Դատավորների կարգապահական պատասխանատվության 2012-2017 թվականների պրակտիկան ՀՀ Արդարադատության խորհրդի որոշումների վերլուծություն](https://prwb.am/2021/10/12/%d5%a4%d5%a1%d5%bf%d5%a1%d5%be%d5%b8%d6%80%d5%b6%d5%a5%d6%80%d5%ab-%d5%af%d5%a1%d6%80%d5%a3%d5%a1%d5%ba%d5%a1%d5%b0%d5%a1%d5%af%d5%a1%d5%b6-%d5%ba%d5%a1%d5%bf%d5%a1%d5%bd%d5%ad%d5%a1%d5%b6%d5%a1-2/); PRWB, Practice of Disciplinary Liability of Judges 2018-2020, Part 1 and Part 2: available at: <https://prwb.am/2021/10/12/%d5%a4%d5%a1%d5%bf%d5%a1%d5%be%d5%b8%d6%80%d5%b6%d5%a5%d6%80%d5%ab-%d5%af%d5%a1%d6%80%d5%a3%d5%a1%d5%ba%d5%a1%d5%b0%d5%a1%d5%af%d5%a1%d5%b6-%d5%ba%d5%a1%d5%bf%d5%a1%d5%bd%d5%ad%d5%a1%d5%b6%d5%a1-2/>

<sup>2</sup> The examined decisions include the decisions, that were published until July 3, 2023.

### 3) Corruption Prevention Commission<sup>3</sup>.

Art. 142 of the Judicial Code provides for the following grounds for imposing disciplinary action against judges:

- a) violation of provisions of substantive or procedural law while administering justice or exercising — as a court — other powers provided for by law committed with intent or with gross negligence;
- b) violation by the judge of the rules of judicial conduct prescribed by the Judicial Code, except for the rule provided in Art. 69 (1(11)), committed with intent or gross negligence.

As for the statute of limitations, in case of violation of provisions of substantive or procedural law the proceedings may be instituted ***within a year*** after revealing a violation by the body instituting the proceedings (*not later than eight years after the entry into force of the judicial act of the national court, or 15 years after the entry into force of the judgment of the European Court of Human Rights*); in case of violations of judicial code of conduct, except for the ones related to the asset declarations, - ***within three months*** after revealing a violation by the body instituting the proceedings but ***not later than one year after committing the violation***; and in case of violations related to the asset declarations, ***within one year*** after revealing a violation by the body instituting the proceedings but ***not later than three years after committing the violation***.

When any of the above-mentioned bodies obtains information either *ex officio* or from natural persons, state or self-governing bodies, officials, media, or as a result of analysis of the judgements of the European Court of Human Rights containing information about *prima facie* disciplinary violations of a judge, within set deadlines, these bodies examine the information and adopt one of the following decisions:

- To institute proceedings,
- Not to institute proceedings.

However, this stage of proceedings lacks transparency, and the information on the reviewed cases is not publicly available.

If disciplinary proceedings are instituted, then the body in charge may either refer the case to the Supreme Judicial Council within two months after instituting the proceedings, or terminate the proceedings. If the case is referred to the Supreme Judicial Council, the latter has to render a decision ***within three months*** after receiving the motion from the instituting body.

The Supreme Judicial Council may subject a judge to one of the following disciplinary sanctions:

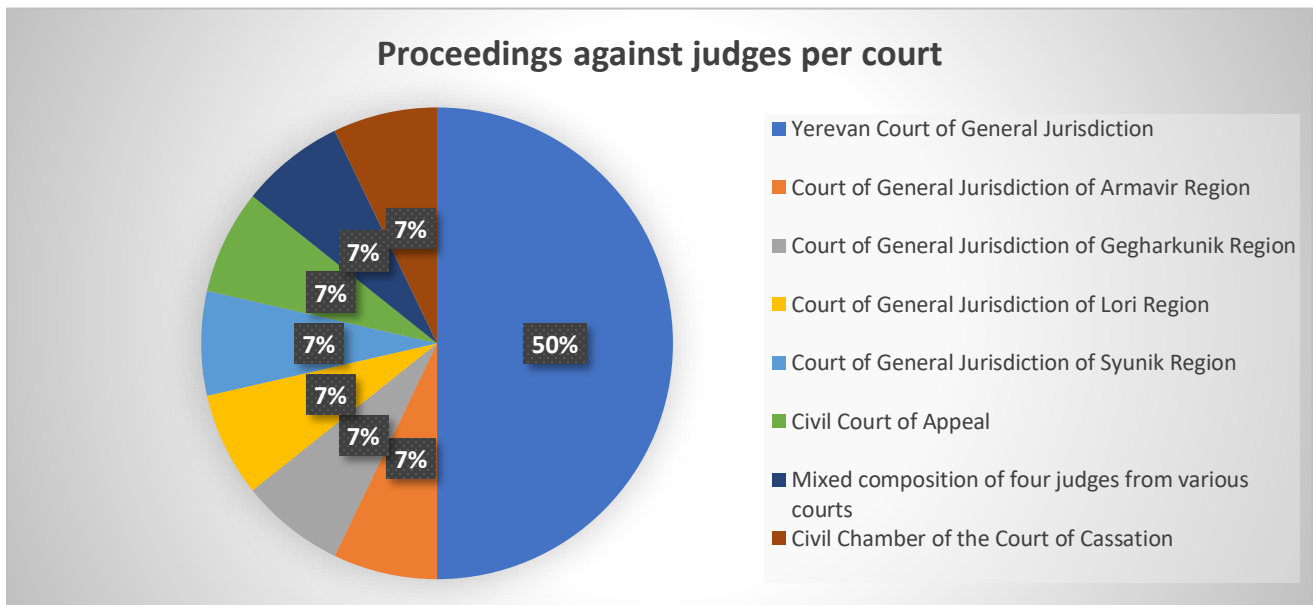
- 1) warning.
- 2) reprimand.
- 3) severe reprimand.
- 4) ban on inclusion on the promotion list for a year for judges who are eligible.
- 5) dismissal from the position of the Chair of a court of Chair of the Chamber of the Court of Cassation.
- 6) termination of powers in case of an essential violation.

#### ➤ ***General Information***

---

<sup>3</sup> Only in cases when the judge failed to comply with the obligation to submit a declaration of the property, income, interests and expenditures in line with the requirements provided for by the Law “On public service” or to submit to the Corruption Prevention Commission relevant materials or clarifications related to any changes in the property as being in line with legitimate income, etc. as prescribed by the Law “On the Corruption Prevention Commission”.

In seven out of 14 cases (50%), disciplinary proceedings were instituted against the judges of the Yerevan Court of General Jurisdiction. In other six cases, disciplinary proceedings were instituted against judges of the Court of General Jurisdiction of Armavir Region, Court of General Jurisdiction of Gegharkunik Region, Court of General Jurisdiction of Lori Region, Court of General Jurisdiction of Syunik Region, Civil Court of Appeal and Civil Chamber of the Court of Cassation, respectively. In one of the cases, the proceedings involved four judges: one held office in the Court of Bankruptcy, the other one – in the Civil Court of Appeal and two judges in the Civil Chamber of the Court of Cassation respectively.



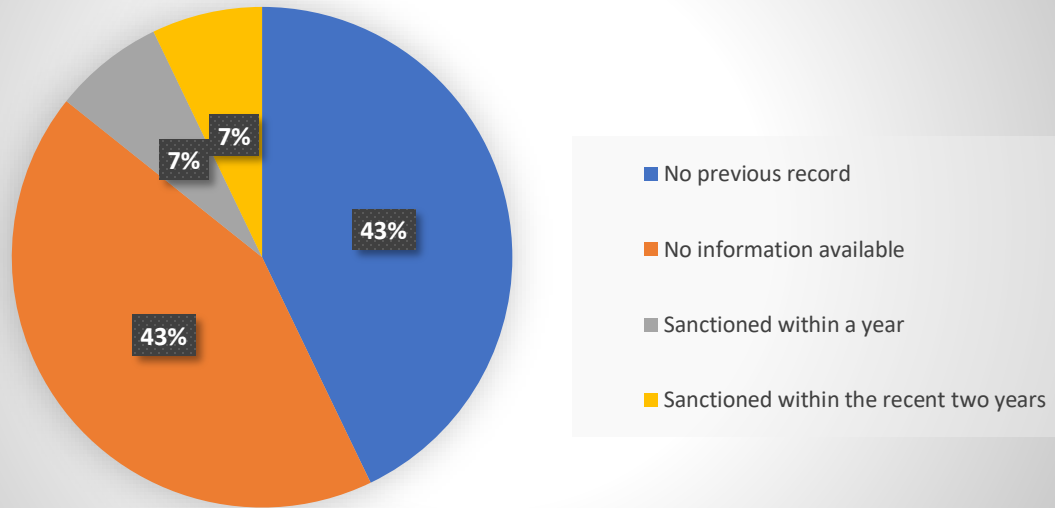
➤ ***Previous record of disciplinary liability***

While the judges in six out of 14 proceedings did not have record of being subjected to disciplinary sanctions in the past, and in six other cases this issue was not clear, in two cases the judges in question were subject to disciplinary liability. More specifically, in one of the cases, the judge in question was subject to reprimand within a year<sup>4</sup> and one judge was subject severe reprimand within the recent two years.<sup>5</sup>

<sup>4</sup> Supreme Decision Council, decision ՔԴԽ-20-Ո-Կ-7.

<sup>5</sup> Supreme Decision Council, decision, ՔԴԽ-20-Ո-Կ-9.

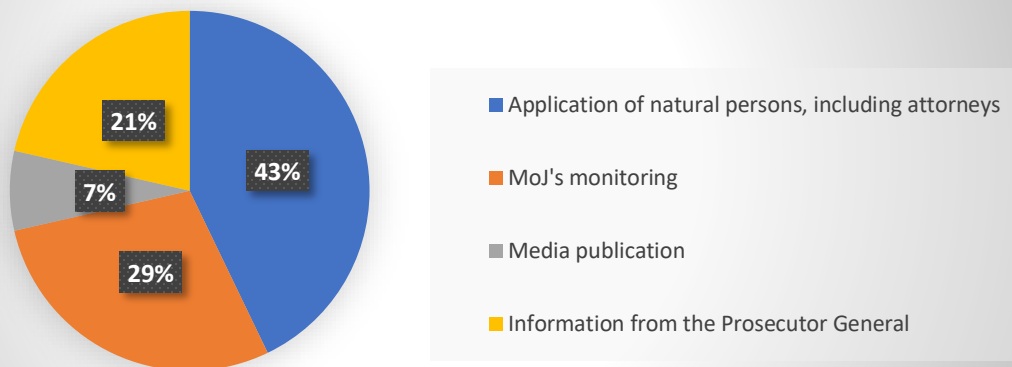
### Previous record of disciplinary liability



#### ➤ *Basis to initiate proceedings*

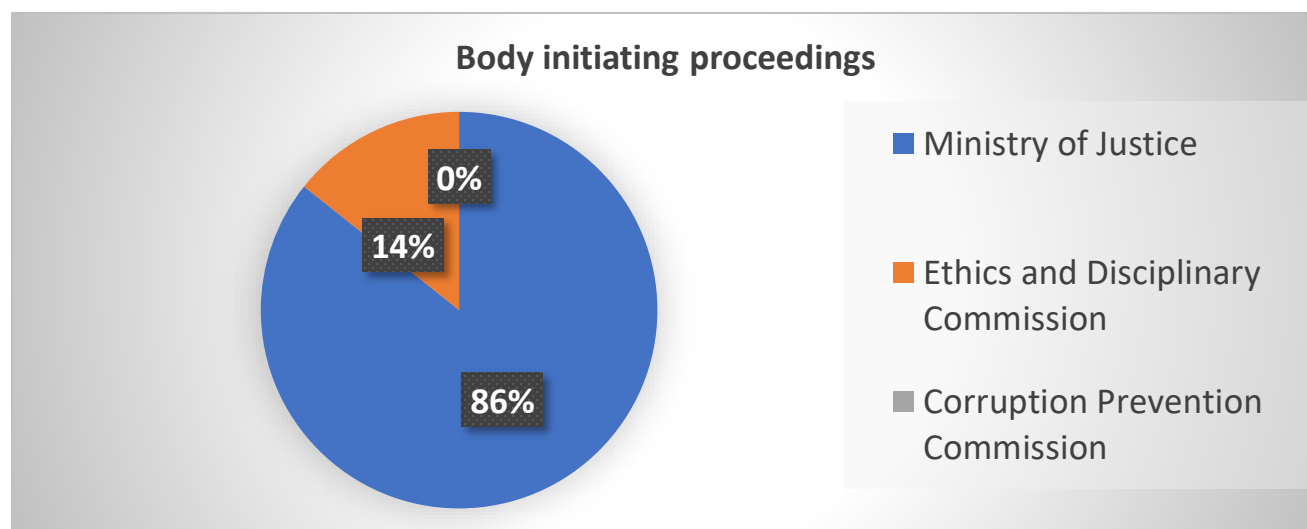
In six out of 14 proceedings (43%), the basis was the application of a natural person, including attorneys representing clients on the case examined by the judge in question. In three cases (21%), the proceedings were initiated based on the report filed by the Prosecutor General. In four cases (29%), the proceedings were instituted by the Ministry of Justice on the ground of revealing an act containing *prima facie* a disciplinary violation: two of them *ex officio* while discharging its powers, and in the other two cases – while examining a judgment of the European Court of Human Rights. In one case (7%), the proceedings were instituted based on the media publication.

### Basis to initiate proceedings



#### ➤ *Body initiating the proceedings*

The overwhelming majority of the proceedings instituted in the reporting period (12 out of 14 cases or 85% of the proceedings) was instituted by the Minister of Justice, the other 2 proceedings – by the Ethics and Disciplinary Commission of the General Assembly of Judges, respectively. In the reporting period, neither the Corruption Prevention Commission nor Supreme Judicial Council Task Force initiated any disciplinary proceedings.



➤ ***Grounds for imposing disciplinary sanction against judges***

In the majority of cases, the proceedings were instituted based on the alleged violation of procedural norms, or procedural norms coupled with a breach of judicial conduct:

- In four cases – exclusively procedural violations;
- In four cases – procedural violations coupled with a breach of judicial code of conduct;
- In two cases - a breach of judicial code of conduct;
- In two cases – a violation of a substantive norm;
- In two cases – a violation of substantive and procedural norms.

Analysis demonstrates that in four cases, the proceedings were instituted on the basis of the violation of procedural deadlines established by law,<sup>6</sup> two cases related to expressing public opinion and criticism by a judge, two cases related to the conciliation proceeding and two cases to the violations made by the judges confirmed in the ECHR judgement.

As for the form of guilt, in nine (64%) out 14 proceedings, the Supreme Judicial Council considered the attributed violation as committed by gross negligence, and in the rest of cases – with intent. Violations committed with intent according to the Supreme Judicial Council included instances of expressing opinions by judges, including criticism of the Council itself.<sup>7</sup>

<sup>6</sup> In one of the cases, the judge delivered a judicial act nine months later than the deadlines established by law, and the act was published one year and one month later than the deadline established by law. In another case, the judge provided a decision that was supposed to be executed without delay only 57 days later.

<sup>7</sup> Supreme Decision Council, decisions P<sup>2</sup>1<sup>2</sup>1<sup>2</sup>-20-11-14-9, P<sup>2</sup>1<sup>2</sup>1<sup>2</sup>-57-11-14-16.

➤ ***Essential disciplinary violations***

Under Art. 142 of the Judicial Code, a disciplinary violation shall be considered as essential in the following cases:

- 1) A violation of provisions of substantive or procedural law while administering justice or exercising — as a court — other powers provided for by law, which has been committed deliberately or with gross negligence; which has resulted in the fundamental violation of human rights and/or freedoms stipulated by the Constitution or international treaties ratified by the Republic of Armenia, or discredits the judiciary;
- 2) violation by the judge of the rules of judicial conduct prescribed by the Judicial Code, except for the rule provided in Art. 69 (1(11)), committed with intent or gross negligence, which has been committed in violation of the obligations of a judge provided for by points 1-4, 8-9, 12, 15-16 of part 1 of Article 69 and points 1-3, 7-8, 13-14 of part 2 of Article 70 and which is not compatible with the status of a judge depending on the circumstances of committal [of a violation] and/or the consequences it gave rise to;
- 3) Committing a disciplinary violation by a judge who has already been subject to two reprimands or one severe reprimand.

In case of five (36%) out of 14 examined proceedings, the violation was evaluated as essential by the body which had initiated the proceedings – the Ministry of Justice. As a result, the powers of judges on these cases were terminated. These cases included:

- In one case, the judge in question who was already subjected to severe reprimand disciplinary sanction committed another disciplinary violation for expressing an opinion publicly;
- In two cases, the analysis of the judgements delivered by the European Court of Human Rights against Armenia revealed *prima facie* disciplinary violations by judges that were considered as incompatible with the judge's office;
- In one case related to the adoption of a child, the judge's actions were considered discrediting the judiciary, decreasing the public confidence in the independence and impartiality of the judiciary hence incompatible with the judge's office;
- In one case, the opinion expressed by the judge was considered as undermining the independence and impartiality of the Council, hence it was considered as conduct incompatible with the judge's office.

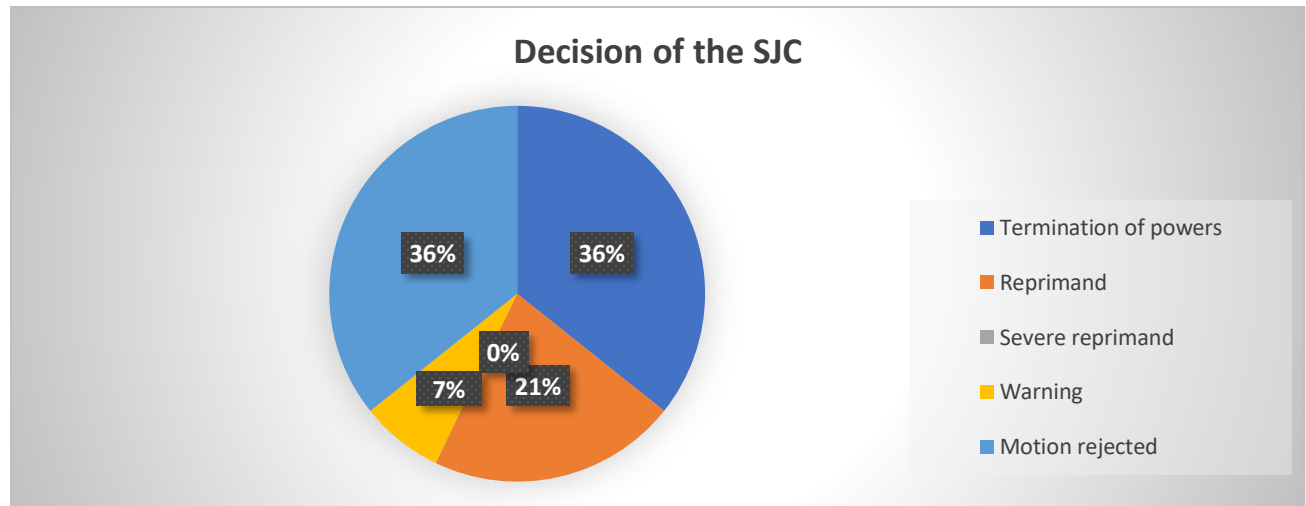
➤ ***Decisions of the Supreme Judicial Council***

In nine (64%) out of 14 cases the Supreme Judicial Council adopted a decision on subjecting the judges to disciplinary liability. In five cases, the motion on subjecting to disciplinary liability was rejected. In four out of these five cases, the rejection was on the basis was the Article 142 of the Judicial Code finding the violation of being of low importance as the violation does not question the suitability of a judge to their status and by its essence cannot discredit the judiciary.

As for subjecting judges to disciplinary liability, in five cases powers of seven judges were terminated based on the essential disciplinary violation. In one of the cases involving four judges, the powers of three judges were terminated, and the fourth judge filed a resignation letter prior to the adoption of the decision by Supreme Judicial Council. In two cases, the termination of powers was applied to judges on the ground of expression a

public opinion and criticism about the activities of the Supreme Judicial Council, in two other cases – based on the judgments of the European Court of Human Rights finding a violation of human rights, and in one case – based on the violations of the child adoption procedure.

In one case, the Supreme Judicial Council subjected the judges in question to ‘warning’ and in three cases – to ‘reprimand’.



In none of the decisions, the Supreme Judicial Council motivated the choice of the type of sanction applied in light of proportionality of the violation.

➤ ***Revealed issues***

- The increase in the number of instituted proceedings by the Ministry of Justice while the number of the instituted proceedings by the Ethics and Disciplinary Commission of the General Assembly of Judges has decreased remains of concern.
- Given lack of transparency of the initial stage – instituting a proceeding, the criteria for selection of the instituted proceedings remain unclear. In this regard, the institution of the proceedings on the basis of the violation of particular judicial deadlines is problematic, particularly how such proceedings are instituted, based on what criteria and principles.
- In cases related to violation of judicial deadlines, the determination of the choice of type of guilt both by the body in charge of initiating of the proceeding and the Supreme Judicial Council, respectively is also not clear.
- Motivation of the motion and classification of a violation by the bodies initiating proceedings remain not public. It is only possible to access the information exclusively through the reference of the Supreme Judicial Council in the final decision.
- In one of the cases, the judge raised the issue of the statute of limitations for subjecting to disciplinary sanction for a violation of the judicial code of conduct, however, it was not adequately addressed by the Supreme Judicial Council.
- Monitoring demonstrates that some sessions of the Supreme Judicial Council were postponed without opening. Such cases, however, were not justified and clarified.



- The termination of the streaming of the sessions on the disciplinary proceedings and their publication on the official website of the Supreme Judicial Council is of concern and is considered a regress in terms of publicity.
- In three cases, the access of observers and journalists to the courtroom during the publication of the decisions adopted by the Supreme Judicial Council was denied while the sessions were public.
- In cases rated as of low importance where the Supreme Judicial Council decided to reject a motion for disciplinary liability, the approach on addressing the type of guilt is not clear.
- In the proceedings instituted on the basis of the judgements of the European Court of Human Rights, the concern remains in relation to the violation of the principle of retroactivity and application of the norm deteriorating the judge's situation.
- The selection of disciplinary sanctions against judges in light of the proportionality to the attributed violation is not sufficiently substantiated by the decisions and this remains of particular concern.
- The question of the proportionality of the sanction chosen by the Council for the violation attributed to the judge, which has not been sufficiently substantiated by the decisions, remains highly problematic.
- The selection of the harshest sanction – termination of powers – for expressing a public opinion by judges remain of concern from the perspective of the proportionality.

## RECOMMENDATIONS

- To amend legislation to ensure that all motions of the instituting body on subjecting judges to disciplinary liability shall be made public.
- To ensure a unified approach by the initiating bodies in relation to the proceedings instituted in relation to violations of judicial deadlines.
- To further clarify the criteria on the determination of the type of guilt both by the initiating bodies and the Supreme Judicial Council.
- In the decisions adopted by the Supreme Judicial Council, to provide clear justifications and explanations in regard to proceedings instituted in violation of the deadline.
- In case of a postponement of the session, to establish a practice of opening a session and rendering a decision on its postponement.
- To require by law to mandatory stream the sessions on the disciplinary liability and publish the recording on the official webpage of the Supreme Judicial Council.
- To exclude instances of prohibiting the presence of observers and journalists in the courtroom during public sessions.
- To provide detailed motivations and reasoning on the selection of the sanction and its proportionality to the disciplinary violation in the decisions of the Supreme Judicial Council.
- To exclude the practice of instituting a proceeding or subjecting a judge to liability on the ground of expressing public opinion.